



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

May 11, 2016

By ECF and Hand Delivery

Honorable William H. Pauley III
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Ganek v. Leibowitz, et al.*, 15 Civ. 1446 (WHP)

Dear Judge Pauley:

This Office represents the Defendants in the above-referenced matter, a lawsuit filed by Plaintiff David Ganek against 15 current and former federal employees in their individual capacities pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). On May 6, 2016, Defendants filed a notice of appeal of the Court's March 10, 2016, Memorandum & Order, *see* Dkt. No. 63, and Defendants intend to appeal the Court's adverse rulings on all of Plaintiff's claims. The parties now write respectfully to inform the Court as to their respective positions on discovery in this matter. *See* Dkt. No. 62 (granting letter application to file supplemental submission).

In light of the pending appeal, Defendants request that the Court stay discovery pending the outcome of the appeal. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (instructing that "[u]ntil this threshold immunity question is resolved, discovery should not be allowed"); *In re Facebook, Inc.*, 42 F. Supp. 3d 558, 558 (S.D.N.Y. 2014) ("As a general rule, when an appeal of the denial of qualified immunity is under consideration, discovery should not proceed."). Plaintiff concedes that, given Defendants' decision to appeal, Defendants are legally entitled to a stay of discovery.

Honorable William H. Pauley III
May 11, 2016

Page 2

We thank the Court for its consideration of and attention to this matter.

Respectfully submitted,

DANIEL L. STEIN
Acting United States Attorney for the
Southern District of New York

By: /s/ Andrew E. Krause
ANDREW E. KRAUSE
SARAH S. NORMAND
Assistant United States Attorneys
Telephone: (212) 637-2769/2709
E-mail: andrew.krause@usdoj.gov
sarah.normand@usdoj.gov

cc: All counsel of record via ECF